IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11686 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMITRABEN RAJUBHAI BHIKHBHAI DHODIYA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11686 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging her detention in pursuance of the order passed against her by the District Magistrate, Bharuch on 12.07.2004 in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as bootlegger from 17.07.2004 in pursuance of the above said order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in arriving at subjective satisfaction. Firstly, the detaining authority relied upon two criminal cases registered against the petitioner under the Bombay Prohibition Act and secondly, relied upon incamera statement of the witness whose identity is not disclosed claiming privilege under Section 9(2) of the PASA Act. Two criminal cases registered against the petitioner under Sections 66B, 65AE and 116B of the Bombay Prohibition Act, on 12.06.2003 and 23.05.2004 before the Western Railway Police Station, Bharuch wherein it was alleged that in both the cases variety of liquor was found from the possession of the petitioner. The detaining authority took into consideration exhaustively the investigation papers in both the cases. The detaining authority also considered a statement of the witness, as aforesaid recorded on 23.06.2004 by sponsoring authority referring to two incidents of 30 days before recording of the statement that the witness was selling peanuts in train and the petitioner stated the witness that she was coming from Bilimora and was going to Palej and in ladies compartment there was her luggage, which was required to be placed on platform and she requested the witness to assist in carrying her luggage. The witness carried two bags and placed on Palej platform. On suspicion, the witness opened the said two heavy bags and found that those bags were contained bottles of foreign liquor and, therefore, the witness refused to assist the petitioner. On such refusal, the petitioner threatened the witness and she was told that her persons had at Karjan and Palej and threatened that since the witness knew that she was carrying illegal liquor in the train and if the witness provided any information to the police, the witness would be thrown out from the train and would be done to death. From the above material, the detaining authority came to the conclusion that the petitioner was a head strong and ferocious lady and was dealing in selling, storing and transporting illegal liquor. Due to this activity of the petitioner, terror was created in the locality and public order was disturbed, knowing fully well that selling of foreign liquor and consumption of the same was injurious

to the public health, the petitioner was involved in the said activity and due to fear of the petitioner, nobody dire to file a complaint against the petitioner before the police. The detaining authority came to the conclusion that the activity of the petitioner was of bootlegger and such activities were required to be prevented forthwith and hence the order under challenge.

3. Learned advocate Mr.M.R.Prajapati, for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length. The affidavit-in-reply is filed by the detaining authority and placed on record is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of, only on the issue that whether there was any material placed before the detaining authority to come to the conclusion that by the activity of the petitioner, the public order was disturbed and public health was adversely affected.

5. It is always fall out, extent, reach, and impact of the activities which would be required to be examined, whether given activity is prejudicial to the public order in a manner that the activity alleged directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to life, property or public health. In the present case, to reach to this subjective satisfaction as aforesaid, there was two types of materials before the detaining authority. Going through the papers of investigation as placed on record and relied upon by the detaining authority, it is clear that both the cases are cases of breach of law and nothing is borne out from such material that by the activity of the petitioner, the public order was disturbed or public health was adversely affected. Both the cases are still to be tried by the Court competent. While, the other material taken into consideration, is in shape of incamera statement. It transpires that nothing is borne out from the statement that by the activity of the petitioner, the public at large was affected in the incident narrated by the witness whose identity is not disclosed. The incident referred to by the witness can also be termed as breach of law and order and not disturbing the public order. Therefore, the offence registered against the petitioner under the Bombay Prohibition Act on the ground that she was dealing in liquor have no bearing on the question of

maintenance of public order, especially in the absence of any material indicating that those activities of the detenu have adversely affected the maintenance of the public order. The petitioner may be punished for the alleged offence committed by her, but surely the acts constituting the offences cannot be said to have affected even the tempo of the life of the community. Likewise, the incident referred to in incamera statement as well, cannot be said to have affected even the tempo of the life of the community and at the most can be turned as breach of law and order, but in no case disturbing the maintenance of public order.

6. The facts of the present case are squarely covered by the decision of the Division Bench of this Court in the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393 wherein after considering many decisions of the Apex Court, the Division Bench of this Court observed that merely filing criminal cases under the Bombay Prohibition Act is not sufficient material to reach subjective satisfaction that the detenu was engaged in activity prejudicial to the public order. While in the present case as discussed above, the statement relied upon by the detaining authority of a witness does not take out the case from maintenance of law and order to that of maintenance of public order. The subjective satisfaction arrived at by the detaining authority in this respect, therefore, is not valid, legal and in accordance with law. The order under challenge is required to be quashed and set aside on this ground alone.

7. In the result, in view of the above discussion, this Special Civil Application is allowed. The order of detention passed against the petitioner on 12.07.2004 by the District Magistrate, Bharuch in exercise of powers conferred upon him by Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner Sumitraben Rajubhai Bhikhbhai Dhodiya Patel is directed to be set at liberty forthwith, if she is not required to be detained for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. Vora,J.]

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